

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WILLIAM D. PAUL,)	
)	
Petitioner,)	
)	
v.)	Civil Action No.: 02:07mc3376-MHT
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

SECOND MOTION TO DISMISS

Comes now the respondent, United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and respectfully requests the Petition to Quash previously filed in this cause be dismissed and as grounds, states as follows:

1. The petitioner initiated these proceedings by filing a Petition to Quash on November 27, 2007. (Doc. 1).
2. The defendant filed its' first Motion to Dismiss on January 17, 2008, (Doc. 8), and incorporates same herein by reference.
3. On February 20, 2008, the United States Magistrate Judge concluded that the petitioner had not properly served the respondent but observed that the 120 days time allowed for the plaintiff to properly serve the respondent had not then passed.
4. Accordingly, the United States Magistrate Judge recommended that the respondent's first Motion to Dismiss, be denied, without prejudice. (Doc. 14, pp. 2 - 3).

5. The Court adopted the recommendation and denied the defendant's Motion to Dismiss, without prejudice, on March 7, 2008. (Doc. 16).

6. The petitioner has yet to serve the respondent in the matter prescribed by Rule 4(I), Federal Rules of Civil Procedure.

7. Rule 4(m), Federal Rules of Civil Procedure, states:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

8. Since more than 120 days has passed since the petitioner filed his Petition to Quash and the petitioner has failed to properly serve the respondent, it is respectfully requested that his Petition to Quash be dismissed.

WHEREFORE, premises considered, the petitioner's Motion to Quash is due to be and should be dismissed.

Respectfully submitted this 31st day of March, 2008.

LEURA G. CANARY
United States Attorney

By: /s/R. Randolph Neeley
R. RANDOLPH NEELEY
Assistant United States Attorney
Bar Number: 9083-E56R
Attorney for Defendant
Post Office Box 197
Montgomery, AL 36101-0197
Telephone No.: (334) 223-7280
Facsimile No.: (334) 223-7418

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed, by United States Postal Service, a copy of same to the following non-CM/ECF participant(s):

William D. Paul
102 Meadow wood Court
Wetumpka, AL 36093

s/R. Randolph Neeley
Assistant United States Attorney